

## ATTACHMENT A

### **The Superfund Cleanup Acceleration Act of 1998 (S. 8) Waiver of Sovereign Immunity**

#### SEC. 603. FULL COMPLIANCE BY FEDERAL ENTITIES AND FACILITIES.

Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620) is amended —

(1) by striking the section heading and inserting the following:

“SEC. 120. FEDERAL ENTITIES AND FACILITIES.”;

(2) in subsection (a)--

(A) by striking paragraph (1) and inserting the following:

“(1) IN GENERAL —

(A) DEFINITION OF SERVICE CHARGE — In this paragraph, the term ‘service charge’ includes —

(i) a fee or charge assessed in connection with —

(I) the processing or issuance of a permit, renewal of a permit, or amendment of a permit;

(II) review of a plan, study, or other document; or

(III) inspection or monitoring of a facility; and

(ii) any other charge that is assessed in connection with a State, interstate, or local response program.

(B) APPLICATION OF FEDERAL, STATE, AND LOCAL LAW —

(i) IN GENERAL — Each department, agency, and instrumentality of the executive, legislative, or judicial branch of the United States shall be subject to and shall comply with this Act and all other Federal, State, interstate, and local substantive and procedural requirements and other provisions of law relating to a response action or restoration action or the management of a hazardous waste, pollutant, or contaminant in the same manner, and to the same extent, as any nongovernmental entity is subject to those provisions of law.

(ii) PROVISIONS INCLUDED — The requirements and other provisions of law referred to in clause (i) include

- (I) a permit requirement;
- (II) a reporting requirement;
- (III) a provision authorizing injunctive relief (including such sanctions as a court may impose to enforce injunctive relief);
- (IV) sections 106 and 107 and similar provisions of Federal, State, interstate, and local law relating to enforcement and liability for cleanup, reimbursement of response costs, (including attorney's fees) contribution, and payment of damages;
- (V) a requirement to pay reasonable service charges;
- (VI) a requirement to comply with an administrative order; and
- (VII) a requirement to pay a civil or administrative penalty, regardless of whether the penalty is punitive or coercive in nature or is imposed for an isolated, intermittent, or continuing violation.

(C) WAIVER OF SOVEREIGN IMMUNITY —

- (i) IN GENERAL — The United States waives any immunity applicable to the United States with respect to any provision of law described in subparagraph (B).
- (ii) LIMITATION — The waiver of sovereign immunity under clause (i) does not apply to the extent that a State law would apply any standard or requirement to a Federal department, agency, or instrumentality in a manner that is more stringent than the manner in which the standard or requirement would apply to any other person.

(D) CIVIL AND CRIMINAL LIABILITY —

- (i) INJUNCTIVE RELIEF — Neither the United States nor any agent, employee, or officer of the United States shall be immune or exempt from any process or sanction of any Federal or State court with respect to the enforcement of injunctive relief referred to in subparagraph (B)(ii)(III).
- (ii) NO PERSONAL LIABILITY FOR CIVIL PENALTY— No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal or State law relating to a response action or to management of a hazardous substance, pollutant, or contaminant with respect to any act or omission within the scope of the official duties of the agent, employee, or officer.
- (iii) CRIMINAL LIABILITY — An agent, employee, or officer of the United States shall be subject to any criminal sanction (including a

fine or imprisonment) under any Federal or State law relating to a response action or to management of a hazardous substance, pollutant, or contaminant, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the United States shall be subject to any such sanction.

(E) ENFORCEMENT —

(i) ABATEMENT ACTIONS — The Administrator may issue an order under section 106 to any department, agency, or instrumentality of the executive, legislative, or judicial branch of the United States. The Administrator shall initiate an administrative enforcement action against such a department, agency, or instrumentality in the same manner and under the same circumstances as an action would be initiated against any other person.

(ii) CONSULTATION — No administrative order issued to a department, agency, or instrumentality of the United States shall become final until the department, agency, or instrumentality has had the opportunity to confer with the Administrator.

(iii) USE OF PENALTIES AND FINES — Unless a State law in effect on the date of enactment of this clause, or a State constitution, requires the funds to be used in a different manner, all funds collected by a State from the Federal Government as a penalty for violation of a provision of law referred to in subparagraph (B) shall be used by the State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.

(F) CONTRIBUTION — A department, agency, or instrumentality of the United States shall have the right to contribution under section 113 if the department, agency, or instrumentality resolves its liability under this Act.;

(B) in the second sentence of paragraph (3), by inserting ‘(other than the indemnification requirements of section 119)’ after ‘responsibility;’ and

(C) by striking paragraph (4); and

(3) in subsection (e), by adding at the end the following:

(7) STATE REQUIREMENTS — Notwithstanding any other provision of this Act, an interagency agreement under this section shall not impair or diminish the authority of a State, political subdivision of a State, or any other person or the jurisdiction of any court to enforce compliance with requirements of State or Federal law, unless those requirements, without objection after notice to the State before or on the date on which the response action is selected, have been —

(A) specifically addressed in the agreement; or (B) specifically waived.”.